

**BURSOR & FISHER, P.A.**  
L. Timothy Fisher (State Bar No. 191626)  
1990 North California Blvd., Suite 940  
Walnut Creek, CA 94596  
Telephone: (925) 300-4455  
Facsimile: (925) 407-2700  
E-Mail: [ltfisher@bursor.com](mailto:ltfisher@bursor.com)

**BURSOR & FISHER, P.A.**  
Scott A. Bursor (State Bar No. 276006)  
Joshua D. Arisohn (*Admitted Pro Hac Vice*)  
888 Seventh Avenue  
New York, NY 10019  
Telephone: (212) 989-9113  
Facsimile: (212) 989-9163  
E-Mail: [scott@bursor.com](mailto:scott@bursor.com)  
[jarisohn@bursor.com](mailto:jarisohn@bursor.com)

*Attorneys for Plaintiff*

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

JOSE ALBINO LUCERO JR., on Behalf of  
Himself and all Others Similarly Situated,

Plaintiff,

v.

SOLARCITY CORP.,

**Defendant.**

Case No. 3:15-cv-05107-RS

**PLAINTIFF'S ADMINISTRATIVE  
MOTION TO FILE DOCUMENTS  
UNDER SEAL**

Hon. Richard Seeborg

1                   **NOTICE OF MOTION AND ADMINISTRATIVE MOTION**

2                   **TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:**

3                   **PLEASE TAKE NOTICE** that pursuant to Northern District of California Civil Rule  
4 Local Rules 7-11 and 79-5, Plaintiff Jose Albino Lucero Jr. (“Plaintiff”) hereby moves the Court  
5 for an order allowing it to file under seal the following information (collectively, the “Confidential  
6 Information”):

- 7                   a. Certain confidential portions of the Plaintiff’s Reply In Further Support Of Motion For  
8 Class Certification;
- 9                   b. Certain confidential portions of the Reply Declaration of Joshua D. Arisohn In Support of  
10 Plaintiff’s Motion For Class Certification (“Arisohn Declaration”);  
11                   c. Exhibits A-F to the Arisohn Declaration; and  
12                   d. The Supplemental Declaration of Randall A. Snyder.

13                   This administrative motion is filed in connection with Plaintiff’s Reply In Further Support  
14 Of Motion For Class Certification.

15                   **MEMORANDUM OF POINTS AND AUTHORITIES**

16                   Northern District Civil Local Rule 79-5(c) provides that counsel seeking to file portions of  
17 documents under seal may file a motion under Local Rule 7-11 and may lodge with the Court  
18 documents for which redacting is requested. Civil Local Rule 79-5(a) provides that the Court may  
19 order documents sealed if they are “privileged or protectable as trade secret or otherwise entitled to  
20 protection under the law . . . .” Plaintiff has lodged the Documents in the manner provided for in  
21 Local Rule 79-5(c). There is good cause to permit the Confidential Information to be redacted  
22 from the public versions of the Documents.

23                   This Court has the power to seal records to protect confidential and proprietary business  
24 information. Both federal and California law recognize that courts should employ reasonable  
25 means to protect trade secrets or other confidential commercial and that allowing the redaction of  
26 such information from publicly filed documents is one of those means. *See* Civil Local Rule  
27  
28

1 79-5; Fed. R. Civ. P. 26(c)(1)(G) (a court may enter an order “requiring that a trade secret or other  
 2 confidential research, development, or commercial information not be revealed”); Cal. Civ.  
 3 Code § 3426.5 (“[A] court shall preserve the secrecy of an alleged trade secret by reasonable  
 4 means, which may include granting protective orders in connection with discovery proceedings,  
 5 holding in-camera hearings, sealing the records of an action, and ordering any person involved in  
 6 the litigation not to disclose an alleged trade secret without prior court approval.”)

7 Though the courts recognize a general right to inspect and copy public records and  
 8 documents, including judicial records, the Supreme Court has stated that this right is limited:

9 It is uncontested, however, that the right to inspect and copy  
 10 judicial records is not absolute. Every court has supervisory power  
 over its own records and files, and access has been denied where  
 court files might have become a vehicle for improper purposes.

11 *Nixon v. Warner Communications, Inc.*, 435 U.S. 589, 598 (1978).

12 In discussing examples of improper purposes, the Court observed that courts are not to  
 13 serve as “sources of business information that might harm a litigant’s competitive standing.” *Id.*  
 14 As the Ninth Circuit has put it:

15 The law . . . gives district courts broad latitude to grant protective orders to  
 16 prevent disclosure of materials for many types of information, including,  
 17 but not limited to, trade secrets or other confidential research,  
 development, or commercial information. Rule 26(c) authorizes the  
 18 district court to issue “any order which justice requires to protect a party  
 or person from annoyance, embarrassment, oppression or undue burden.”  
 The Supreme Court has interpreted this language as conferring “broad  
 19 discretion on the trial court to decide when a protective order is  
 appropriate and what degree of protection is required.”

20 *Phillips v. General Motors Corp.*, 307 F.3d 1206, 1211 (9th Cir. 2002) (internal citations omitted).

21 The documents described above contain Defendant’s purportedly confidential and  
 22 proprietary information regarding its dialing systems and have been marked as confidential.  
 23 Accordingly, the parties consider the Confidential Information a “trade secret[s] or other  
 24 confidential research, development, or commercial information.” Fed. R. Civ. P. 26(c)(1)(G). The  
 25 interest in public disclosure is also outweighed by Parties’ confidentiality interest. Public  
 26 disclosure of the Confidential Information may harm Defendant SolarCity’s competitive standing  
 27 and thus cause the Court’s file to serve as a potential vehicle for an improper purpose. Such  
 28

1 disclosure will also subject Defendant to “annoyance, embarrassment, oppression, or undue  
2 burden.” Fed. R. Civ. P. 26(c)(1)(G).

3 **CONCLUSION**

4 For the foregoing reasons, Plaintiff requests that the Court grant this Administrative Motion  
5 and permit Plaintiff to redact the Confidential Information from the public version of the  
6 Documents.

7 Dated: February 23, 2017

Respectfully submitted,

8 **BURSOR & FISHER, P.A.**

9 By: /s/ Joshua D. Arisohn  
Joshua D. Arisohn

10 Scott A. Bursor (State Bar No. 276006)  
11 Joshua D. Arisohn (*Admitted Pro Hac Vice*)  
888 Seventh Avenue  
12 New York, NY 10019  
Telephone: (212) 989-9113  
Facsimile: (212) 989-9163  
13 E-Mail: scott@bursor.com  
jarisohn@bursor.com

14 **BURSOR & FISHER, P.A.**

15 L. Timothy Fisher (State Bar No. 191626)  
16 1990 North California Boulevard, Suite 940  
Walnut Creek, CA 94596  
17 Telephone: (925) 300-4455  
Facsimile: (925) 407-2700  
18 E-Mail: ltfisher@bursor.com

19 *Attorneys for Plaintiff*